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In The
Supreme Court of the United States

OCTOBER TERM, 1991

THE DISTRICT OF COLUMBIA
AND SHARON PRATT KELLY, MAYOR,
Petitioners,

v.

THE GREATER WASHINGTON BOARD OF TRADE,
Respondent.

**Petition for a Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit**

PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

In *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), this Court ruled that the federal Employee Retirement Income Security Act ("ERISA") does not preempt state disability insurance laws protecting employees insofar as these laws permit employers to comply with them by establishing an employee benefit plan that is separate from their ERISA-covered employee benefit plans. The issue presented for review concerns that central holding of *Shaw*: whether *Shaw* sanctions ERISA preemption of a state workers' compensation law which requires employers, who provide health insurance to their employees, to provide equivalent benefits to employees injured on the job when (1) ERISA treats workers' compensation laws just like disability insurance laws and (2) the workers' compensation law at issue permits employers to comply with it by establishing an employee benefit plan separate from their ERISA-covered employee benefit plans.

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THE DISTRICT OF COLUMBIA
AND SHARON PRATT KELLY, MAYOR,
Petitioners,

v.

THE GREATER WASHINGTON BOARD OF TRADE
Respondent.

**Petition for a Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit**

The District of Columbia and Sharon Pratt Kelly, its Mayor, petition this Court for a writ of certiorari to review a decision of the United States Court of Appeals for the District of Columbia Circuit.¹

OPINIONS BELOW

The November 15, 1991, decision of the United States Court of Appeals for the District of Columbia Circuit is reported at 948 F.2d 1317. App. 1a-20a. The March 27, 1991, decision of United States District Court for the District of Columbia in Civil Action No. 91-00511 is not reported. App. 21a-29a.

The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291. Following its decision, petitioners filed a timely petition for rehearing. That petition was denied on January 10, 1992. App. 31a.

¹ At the time of the decision below, the Mayor's name was Sharon Pratt Dixon; since that time, she has married and has changed her name to Sharon Pratt Kelly.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The case involves both the Employee Retirement Income Security Act of 1974 ("ERISA"), 88 Stat. 829, as amended, 29 U.S.C. § 1001 *et seq.* and the District of Columbia Workers' Compensation Equity Amendment Act of 1990 ("Equity Amendment Act"), D.C. Law 8-198, codified in scattered sections of D.C. Code Ann. §§ 36-301 to -342.1 (1991 supp.). The relevant text of these provisions is reproduced in the appendix. App. 32a-34a.

STATEMENT OF THE CASE

I. THE DISTRICT OF COLUMBIA'S WORKERS' COMPENSATION LAW.

The District of Columbia's workers' compensation law requires employers in the District to compensate their employees who suffer work-related injury or death for loss of income and for disability; and it also requires employers to provide medical services and supplies for any such injury. See D.C. Code Ann. § 36-301 *et seq.* (1981 ed. 1988 repl. 1991 supp.). This law is the exclusive remedy available to employees against their employers for work-related injury or death. D.C. Code Ann. § 36-304.

In 1990, the Council of the District of Columbia amended its workers' compensation law by enacting the District of Columbia Workers' Compensation Equity Amendment Act of 1990, D.C. Act 8-261. Following approval by the Mayor on October 24, 1990, and the expiration of the Congressional review period, the Equity Amendment Act became effective on March 6, 1991. D.C. Law 8-198.

The Equity Amendment Act requires employers, who provide health insurance to their employees, to provide equivalent health insurance, for up to 52 weeks, to employees

who are receiving, or who are eligible to receive, workers' compensation under the District's workers' compensation law. D.C. Code Ann. § 36-307(a-1) (1991 supp.) states:

(1) Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this chapter. . . .

(3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

II. ERISA.

ERISA is a complex, comprehensive federal statute designed to ensure that employees are not unfairly deprived of pension and other employment-related benefits promised by their employers. To achieve this goal, ERISA imposes a number of obligations on employers and, in exchange, preempts, with important exceptions, state legislation relating to employee benefit plans.² For example, ERISA reserves to the states the power to enact legislation governing subjects traditionally within their purview, such as legislation providing benefits to employees pursuant to workers' compensation, unemployment compensation, and disability insurance laws, as well as legislation governing insurance, banking, and securities.

ERISA's central provisions require employer-sponsored employee welfare benefit plans — plans providing for medical and similar benefits or for "benefits in the event of sickness, accident, disability, death or unemployment" — to comply with federal standards governing reporting, disclosure, and

² Section 3(10) of ERISA, 29 U.S.C. § 1002(10), defines the term, "State," as including the District of Columbia.

fiduciary responsibility.³ 29 U.S.C. §§ 1021-1031, 1101-1114. ERISA also requires employer-sponsored pension benefit plans to comply with those standards; in addition, such pension plans must comply with federal standards regulating participation, vesting, and funding (29 U.S.C. §§ 1051-1086). ERISA does not mandate substantive benefit terms or levels, but simply provides procedural protections for voluntary employee benefit plans.

To ensure comprehensive federal regulation of employee benefit plans, ERISA preempts state laws "relating to" such plans, subject to a number of important exceptions. Section 514(a) of ERISA, 29 U.S.C. § 1144(a), states, in pertinent part, that ERISA

shall supersede any and all State laws insofar as they may now or hereafter *relate to any employee benefit plan described in section 1003(a) [§ 4(a)] of this title and not exempt under section 1003(b) [§ 4(b)] of this title.*

(Emphasis added). Section 4(a), 29 U.S.C. § 1003(a), defining "Coverage," states in pertinent part: *Except as provided in subsection (b) of this section . . . , this subchapter shall apply to any employee benefit plan if it is established or maintained — (1) by any employer engaged in commerce or in any industry or activity affecting commerce* (Emphasis added).

The exemptions from preemption of greatest importance to this case are two. First, ERISA expressly contemplates the continued existence of state workers' compensation, unemployment compensation, and disability insurance laws.

³ Section 3(1) of ERISA, 29 U.S.C. § 1002(1), defines an employee welfare benefit plan as including "any plan, fund, or program . . . established or maintained by an employer . . . for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment"

Employee benefit plans maintained solely for the purpose of complying with such laws are exempt from ERISA's disclosure, reporting, and fiduciary requirements and are subject to state regulation. Thus, section 4(b)(3) of ERISA, 29 U.S.C. § 1003(b)(3), provides:

(b) The provisions of this subchapter shall not apply to any employee benefit plan if —

(3) *such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws*⁴

Second, ERISA contains an exemption from preemption for state laws regulating insurance, banking, and securities. Section 514(a), 29 U.S.C. § 1144(a), states that ERISA supersedes state laws relating to employee benefit plans "[e]xcept as provided in subsection (b) of this section." Subsection 514(b), one of the "savings" provisions of the ERISA preemption clause, provides in paragraph (2)(A): "Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." 29 U.S.C. § 1144(b)(2)(A). Subparagraph (B), 29 U.S.C. § 1144(b)(2)(B), the "deemer" provision, prohibits states from, *inter alia*, characterizing employee benefit plans as insurance and thus as subject to state regulation.

III. THE PROCEEDINGS BELOW.

The District Court.

Almost immediately after the District's Equity Amendment Act became effective, the Greater Washington Board of Trade, a not-for-profit corporation that provides health insurance to its employees, brought an action in the United

⁴ (Emphasis added). Subsection 4(b), 29 U.S.C. § 1003(b), also renders ERISA not applicable to employee benefit plans that are government plans ((b)(1)); church plans ((b)(2)); plans maintained outside the United States for nonresident aliens ((b)(4)); and unfunded excess benefit plans ((b)(5)).

States District Court for the District of Columbia pursuant to 28 U.S.C. § 1331. The Board of Trade sought a declaration that the Equity Amendment Act is preempted by ERISA and an injunction against its enforcement; the District responded by moving to dismiss the complaint for failure to state a claim.

The Honorable Louis F. Oberdorfer ruled that ERISA did not preempt the District's amendment of its workers' compensation law. In so ruling, Judge Oberdorfer relied principally upon two cases: (1) *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), in which this Court held that a state disability benefits law, requiring employers to provide monetary benefits to women disabled from working because of pregnancy, was not preempted by ERISA; and (2) *R.R. Donnelley & Sons Co. v. Prevost*, 915 F.2d 787 (2d Cir. 1990), *cert. denied*, 111 S. Ct. 1415 (1991), in which the Second Circuit, interpreting *Shaw*, ruled not preempted a state workers' compensation statute on which the District's Equity Amendment Act was modeled. App. 22a-26a. In Judge Oberdorfer's view, the Equity Amendment Act, like the disability benefits law in *Shaw*, and the workers' compensation law in *Donnelley*, "related to" employee welfare benefit plans covered by ERISA. App. 22a-23a & 25a. However, the Equity Amendment Act was not totally preempted for that reason, because that Act, like the statutes in *Shaw* and *Donnelley*, permits employers to comply by establishing an employee benefit plan, separate from their ERISA-covered plans, solely for the purpose of complying with a state statute protected by section 4(b)(3) of ERISA, 29 U.S.C. § 1003(b)(3). App. 25a-26a. As a consequence, Judge Oberdorfer denied the Board of Trade's motion for declaratory and injunctive relief and granted the District's motion to dismiss. App. 30a.

The Court of Appeals.

The United States Court of Appeals for the District of Columbia Circuit reversed. App. 1a. According to the court of appeals, if a state law "relates to" an ERISA-covered plan,

it can be saved from preemption only if it is a law, such as a law governing insurance, saved by section 514(b) of ERISA, 29 U.S.C. § 1144(b). App. 10a, 13a. Here, the Equity Amendment Act relates to ERISA-covered plans by tying the Act's coverage and benefit levels to those established by employers' ERISA-covered plans; and the Equity Amendment Act is not a law encompassed by the savings clause of section 514(b). App. 11a-13a. The Equity Amendment Act is therefore preempted even though employers can comply with the Act by establishing and maintaining a plan separate from their ERISA-covered plans. App. 15a. In so ruling, the court acknowledged that *Shaw* "found that where the [state] law gives employers the option of establishing a separate benefit plan that is exempt from ERISA coverage under section 4(b), such a law would not be preempted." App. 11a-12a. The court ruled, however, that *Shaw* was distinguishable because, in its view, "the state law in *Shaw* related only to an employee disability insurance plan" exempt from ERISA, and not "to an ERISA-covered plan." App. 12a (emphasis supplied by court). Thus, "[t]he plan to which the . . . Disability Benefits Law related *was* exempt, so the law did not even qualify at the threshold for preemption." App. 12a-13a (emphasis supplied by court). According to the court, "[h]ad the Equity Amendment Act related only to the workers' compensation plan — had it, for example, made no reference to existing ERISA-covered plans and simply required all employers to provide specified minimum health benefits for employees receiving workers' compensation — it would clearly have survived preemption under the principles announced in *Shaw*." App. 12a.

In its opinion, the court of appeals expressly declined to follow the Second Circuit's decision in *Donnelley* even though it recognized that "[t]he statute at issue in *Donnelley* is indistinguishable from the Equity Amendment Act" and that the Second Circuit in *Donnelley* had ruled, based on *Shaw*, that the state statute, on which the District had modeled its Equity Amendment Act, was not preempted by ERISA. App. 15a.

Finally, the court of appeals examined the policy and purpose of ERISA. Thus, Congress, in enacting ERISA, was concerned that "[a] patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them." App. 16a, quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 11 (1987). By way of illustration, and in express contradiction of its earlier ruling that the law in *Shaw* had not related to ERISA-covered plans, the court of appeals explained that Congress'

concern for minimizing the burden on the administration of ERISA-covered plans is reflected in the decision of the [Supreme] Court in *Shaw*, where it held that *the Disability Benefits Law was preempted to the extent that it applied to benefits provided under a multibenefit plan*: "An employer with employees in several States would find its plan subject to a different jurisdictional pattern of regulation in each State, depending on what benefits the State mandated under disability, work[ers'] compensation, and unemployment compensation laws."

App. 16a (emphasis added), quoting *Shaw, supra*, 463 U.S. at 107. In the case of the Equity Amendment Act, the court of appeals determined that it "could have a serious impact on the administration and content of the ERISA-covered plan." App. 17a. The court failed to identify, however, what potential burden the Equity Amendment Act places on the administration of ERISA-covered plans and held that preemption would be required even if there were no such impact because the Act could have an impact on employer decisions whether to provide health insurance benefits to employees and the level of such benefits. App. 18a, citing *Standard Oil Co. v. Agsalud*, 633 F.2d 760 (9th Cir. 1980), *aff'd mem.*, 454 U.S. 801 (1981). This potential impact, according to the court, meant that the District was impermissibly attempting "to regulate indirectly" what it was "forbidden to regulate directly" — the provision of health insurance benefits to employees pursuant to plans covered by ERISA. App. 18a.

REASONS FOR GRANTING THE WRIT

This case raises important issues about the extent to which ERISA restricts the power of the States and the District of Columbia to require employers to provide benefits to employees, including health insurance, as part of workers' compensation, unemployment compensation, and disability insurance laws. The court below has held that ERISA precludes states from requiring health insurance, as part of workers' compensation for employees who suffer on-the-job injuries, whenever these benefits are set by reference to what employers otherwise provide their employees. It has done so even though workers' compensation laws typically set benefits by reference to such employer decisions.

The decision below conflicts with this Court's decision in *Shaw*, which found that ERISA permits states to enact disability insurance and similar laws requiring employers to provide benefits to employees so long as employers are given the option of complying with such state laws by establishing a plan separate from their ERISA-covered plans. The decision also conflicts with the Second Circuit's decision in *Donnelley*, which found that ERISA permits states to enact workers' compensation laws like the District's Equity Amendment Act. Review by this Court is necessary to resolve these conflicts in order to ensure a consistent interpretation of an important federal statute in a manner that properly preserves the power of the States and the District to enact legislation in areas of traditional local concern and on the important matter of employer-provided health insurance benefits. Review is particularly necessary now because, only last year, this Court declined to review *Donnelley*. The States and the District of Columbia thus need to have their powers clarified; and state and federal courts need guidance in determining the extent to which ERISA preempts local laws — workers' compensation, unemployment compensation, and disability insurance laws — that ERISA expressly preserves.

I. THE DECISION BELOW IS IN CONFLICT WITH THIS COURT'S DECISION IN *SHAW*.

In *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), this Court unanimously ruled that ERISA does not preempt state legislation requiring employers to provide disability benefits to employees to the extent that such legislation permits employers to comply by establishing employee benefit plans administratively separate from their ERISA-covered plans. At issue in *Shaw* was a state law requiring employers to pay monetary benefits for up to 26 weeks in any one-year period to employees unable to work because of pregnancy or other non-occupational disability. The disability benefits law was challenged by employers who had employee benefit plans subject to ERISA which did not include all the benefits mandated by the state law.

In *Shaw*, this Court took a two-step approach in determining whether the state law was preempted by ERISA: "The issues are whether the [state laws] . . . 'relate to' employee benefit plans within the meaning of § 514(a), . . . and, if so, whether any exception in ERISA saves them from preemption." *Id.* at 96.⁵ According to this Court, "[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Id.* at 96-97.

This Court ruled that "the Disability Benefits Law plainly is a state law relating to employee benefit plans," and that, as a consequence, whether the law was preempted depended on whether "the plans to which it relates are exempt from

⁵ *Shaw* also involved the validity of a state human rights law prohibiting employment discrimination, including discrimination in employee benefit plans, on the basis of pregnancy. This Court ruled that this law was preempted insofar as it prohibited practices by ERISA-covered benefit plans that were lawful under federal law; this Court also ruled, pursuant to section 514(d) of ERISA, 29 U.S.C. § 1144(d)(4), a provision which saves other federal laws from preemption, that the state human rights law was not preempted to the extent that it prohibited practices that were also prohibited by federal law.

ERISA under § 4(b)." *Id.* at 106. More specifically, because the state law at issue was an employment-related disability insurance law, preemption turned on the meaning of section 4(b)(3) of ERISA, which exempts from ERISA coverage employee benefit plans " 'maintained solely for the purpose of complying with applicable [workmen's compensation laws or unemployment compensation or] disability insurance laws.' " *Id.*, quoting 29 U.S.C. § 1003(b)(3).

This Court identified two problems in resolving this issue. First, some of the employers affected by the state law had multibenefit plans governed by ERISA that provided benefits not required by the state law; this was problematic because the plans exempted from ERISA under section 4(b)(3) encompass only plans "maintained solely" to comply with the designated state laws. *Id.* at 106-07. "The test" for determining this matter, this Court ruled, is "whether the plan, as an administrative unit, provides only those benefits required by the applicable state law." *Id.* at 107. Thus, because there cannot be mutually exclusive pockets of federal and state jurisdiction within a plan, "[o]nly separately administered disability plans maintained solely to comply with the Disability Benefits Law are exempt from ERISA coverage under § 4(b)(3)." *Id.* at 108.

The second problem confronting this Court in *Shaw* was to prevent employers from evading lawful state regulation of employee welfare benefits pursuant to workers' compensation, unemployment compensation, and disability insurance laws by the expedient of adopting multibenefit plans subject to ERISA that combine benefits inferior to those required by state law with other benefits. To keep from making enforcement of these state laws "impossible," a result "Congress surely did not intend," this Court held in *Shaw* that such laws are not preempted by ERISA so long as they give employers the option of complying with them by establishing plans that are administratively separate from

their ERISA-covered plans. *Id.* at 108. In a key passage, this Court articulated the central principle governing ERISA preemption of state workers' compensation, unemployment compensation, and disability insurance laws as follows:

A State may require an employer to maintain a disability plan complying with state law as a separate administrative unit. Such a plan would be exempt under § 4(b)(3). The fact that state law permits employers to meet their state-law obligations by including disability insurance benefits in a multibenefit ERISA plan . . . does not make the state law wholly unenforceable as to employers who choose that option.

In other words, *while the State may not require an employer to alter its ERISA plan, it may force the employer to choose between providing disability benefits in a separately administered plan and including the state-mandated benefits in its ERISA plan.* If the State is not satisfied that the ERISA plan comports with the requirements of its disability insurance law, it may compel the employer to maintain a separate plan that does comply.

Id. at 108 (emphasis added). As applied to the case before it, this Court held that the state disability benefits law *was preempted* to the extent that it would permit enforcement by requiring employers to alter their ERISA-covered plans. This Court also held that the law *was not preempted* to the extent that it gave employers the option of establishing a separate administrative unit to comply with its terms.

Given this Court's rulings in *Shaw* that the disability benefits law was preempted in part and not preempted in part, it is apparent that *Shaw* rests on two fundamental principles. First, *Shaw* recognizes that benefits required by workers' compensation, unemployment compensation, or disability insurance laws are, *by definition*, employee welfare benefits, that is, "benefits in the event of sickness, accident, disability . . . or unemployment" within the meaning of

section 3(1) of ERISA, 29 U.S.C. § 1002(1). As a consequence, such state laws necessarily will "relate to" ERISA-covered employee welfare benefit plans. Second, to avoid preemption of all state laws governing workers' compensation, unemployment compensation, and disability — a result Congress plainly did not intend in view of ERISA's express exemption for plans maintained solely to comply with such laws — *Shaw* allows states to enact such laws so long as these laws permit employers to comply by establishing an employee benefit plan separate from their ERISA-covered plans. To rule otherwise would allow employers to evade compliance with workers' compensation, unemployment compensation, and disability insurance laws by establishing an ERISA-covered employee welfare benefit plan combining benefits not required by state law with benefits inferior to those required by state law.

The decision of the court of appeals here thus squarely conflicts with *Shaw* in a number of respects:

1. The court of appeals ignored *Shaw*'s holding that state legislation encompassed by section 4(b)(3) of ERISA is not preempted, even if it "relates to" an ERISA-covered plan, insofar as it governs plans maintained solely for the purpose of complying with such state legislation. Instead, it erroneously interpreted *Shaw* as merely ruling that the New York disability insurance law was not preempted because the law did not "relate to" ERISA-covered plans. This was an error the court of appeals acknowledged elsewhere in its opinion when it described *Shaw* as holding that "the Disability Benefits Law was preempted to the extent that it applied to benefits provided under a multibenefit plan" subject to ERISA. App. 16a. Plainly, if the New York law had not related to ERISA-covered plans, it would not have been preempted by ERISA to any extent. Thus, as this Court ruled in *Shaw*, "[t]he court of appeals erred . . . in holding that New York was not at all free to enforce the Disability Benefits Law against those" employers "that provide disability benefits as part of multibenefit plans." *Shaw*,

supra, 463 U.S. at 108. Here, too, the court of appeals erred in holding that the District of Columbia is not at all free to enforce its Equity Amendment Act against those employers that provide health insurance as part of ERISA-covered multibenefit plans.

2. The court of appeals erroneously ruled that, because ERISA does not list workers' compensation laws in its "savings" clause (§ 514(b)), along with insurance and similar laws, workers' compensation laws are preempted whenever they "relate to" ERISA-covered plans by expressly referring to such plans. The fact that the preemption provision of ERISA, section 514(a), incorporates a savings clause for state insurance and similar laws, does not negate the statutory exemption from preemption in section 514(a) for laws, such as workers' compensation and disability insurance laws, that relate to plans which are exempt from ERISA coverage by virtue of section 4(b)(3). Indeed, this Court in *Shaw* described both "[s]ections 4(b)(3) and 514(b)" as provisions "which list specific exceptions" to preemption. 463 U.S. at 104.

3. The court of appeals erred in ruling that the District's Equity Amendment Act runs afoul of ERISA because it "relates to" ERISA-covered plans by expressly referencing such plans in establishing health insurance coverage and benefit levels. ERISA itself makes no distinction based on the manner in which a workers' compensation or similar law "relates to" an ERISA-covered plan so long as the law does not require employers to alter their ERISA-covered plans. As this Court ruled in *Shaw*, the term "relates to" means having "a connection with or reference to such a plan." 463 U.S. at 97 (emphasis added). Furthermore, there are no policy reasons underlying ERISA that would support disparate treatment of a law, such as that in *Shaw*, which has a connection with ERISA-covered plans, and a law, such as that in *Donnelley* and in this case, which has a reference to, and thus a connection with, such plans. Under this Court's analysis in *Shaw*, the District's Equity Amendment Act is

just like New York's Disability Benefits Law: it "relates to" ERISA-covered plans, voluntary employer-sponsored employee welfare benefit plans providing various benefits, but an employer may comply with the Act by establishing a plan separate from its ERISA-covered plan.

4. The court of appeals erred in stating that the District has impermissibly "tried to regulate indirectly what" it is "forbidden to regulate directly." App. 18a. To the contrary, the Equity Amendment Act does not require employers to provide health insurance benefits to employees under their ERISA-covered plans and it does not purport to regulate the terms or the administration of such plans. Under the Equity Amendment Act, employers remain free to alter their ERISA-covered plans as they deem appropriate. All that the Act does is to require employers, who provide health insurance to their employees pursuant to their ERISA-covered plans, to provide equivalent health insurance to their employees entitled to workers' compensation. Employers may comply with this Act by establishing plans that are separate from their ERISA-covered plans, *ie.*, plans established solely for the purpose of complying with the Equity Amendment Act.⁶

⁶ This Court's other decisions involving workers' compensation laws or health insurance benefits in which preemption was found are very different from the law at issue here. Thus, *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), involved a state statute forbidding employers from integrating employee benefits payable pursuant to ERISA-covered pension plans with employee benefits payable pursuant to workers' compensation laws. That state statute not only precluded employers from establishing a plan separate from their ERISA-covered plans in order to comply with it, but also conflicted with federal law permitting integration of such benefits. *Standard Oil Co. v. Agsalud*, 633 F.2d 760 (9th Cir. 1980), *aff'd mem.*, 454 U.S. 801 (1981), involved a state law which required employers to provide their employees with a comprehensive health-care plan, and thus required employers to alter their ERISA-covered plans. In *Standard Oil*, the court of appeals also ruled that the state law was not a disability insurance law, and thus protected by section 4(b)(3) of ERISA, 29 U.S.C. § 1003(b)(3), because the state required benefits to be paid without regard to a disabling injury. 633 F.2d at 764. By [Footnote continued on next page]

5. The court of appeals erred in ruling that the Equity Amendment Act is different, for ERISA purposes, from a workers' compensation law that sets health insurance benefits for injured employees without reference to health insurance benefits provided by employers pursuant to their ERISA-covered plans. Even a statute of the latter type would have a connection with, and thus "relate to," ERISA-covered plans, whether such plans provided no health insurance benefits to injured workers, 30 days of such benefits, or even 104 weeks of such benefits. See *infra* note 7. Such a statute might also cause employers to modify benefits provided by their ERISA-covered plans and result in administrative difficulties, particularly where the benefits required by law for injured workers differ from those provided by an ERISA-covered plan. This statute would not, of course, be preempted by ERISA so long as employers could comply with it by establishing an employee benefit plan separate from their ERISA-covered plans.

II. THE DECISION BELOW CREATES A SQUARE AND INTOLERABLE CONFLICT WITH THE SECOND CIRCUIT.

The court of appeals expressly acknowledged that the District's Equity Amendment Act is "indistinguishable" from the state workers' compensation legislation that withstood an ERISA-based attack in *R.R. Donnelley & Sons Co. v. Prevost*, *supra*. App. 15a. The court of appeals also expressly acknowledged that its decision squarely conflicts with *Donnelley*:

[Footnote continued from the previous page]
contrast, the Equity Amendment Act requires health insurance to be provided only to employees who are receiving or who are eligible to receive workers' compensation, a law that does not require employers to alter their ERISA-covered plans. Finally, *Stone & Webster Eng'g Corp. v. Hsley*, 690 F.2d 323 (2d Cir. 1982), *aff'd mem. sub nom., Arcudi v. Stone & Webster Eng'g Corp.*, 463 U.S. 1220 (1983), involved a state workers' compensation law that required employers to alter their ERISA-covered multibenefit plans to provide health insurance to injured workers, a law that *Shaw* made clear is preempted by ERISA. See also *infra* at 18.

"[W]e disagree with the conclusion of the Second Circuit in *Donnelley* and conclude that the district court in this case erred in holding that the Equity Amendment Act was not preempted." App. 16a.

The court of appeals is correct that its decision cannot be reconciled with the Second Circuit's decision in *Donnelley*. In *Donnelley*, the Second Circuit ruled that ERISA does not preempt a workers' compensation law requiring employers, who provide health insurance to their employees, also to provide equivalent benefits to employees eligible to receive workers' compensation. In so ruling, the Second Circuit recognized that, under *Shaw*, the statute "related to" an ERISA-covered employee welfare benefit plan.⁷ However, the statute was not preempted pursuant to *Shaw*'s interpretation of the exemption from preemption for state laws governing employee benefit plans maintained solely for the purpose of complying with state workers' compensation, unemployment compensation, or disability insurance statutes. Thus, the Second Circuit found significant the "caveat" in *Shaw* that ERISA should not be construed to allow employers to circumvent such state laws by establishing ERISA-covered employee benefit plans combining benefits inferior to those required by state law with other benefits not required by state law. 915 F.2d at 793. In applying *Shaw* to the case before it, the Second Circuit observed that the state statute permitted an employer to comply with its requirements by establishing an administrative unit separate from the unit administering its ERISA plan. The fact that the statute also afforded an employer alternative avenues by which to comply with its requirements did not require the conclusion that it was preempted by ERISA. Thus, "if *Shaw* allows a state to authorize alternatives to a separate plan *within* an ERISA plan without losing the benefit of the

⁷ Indeed, in *Donnelley*, the employer who challenged the state statute had provided for up to 104 weeks of health insurance in its ERISA plan for employees receiving workers' compensation. 915 F.2d at 790.

section 1003(b)(3) exemption, it may surely authorize such alternatives *outside* the confines of an ERISA plan without doing so." *Id.* at 793-94 (emphasis in original).

The Second Circuit also distinguished its earlier decision in *Stone & Webster Eng'g Corp. v. Ilsley*, 690 F.2d 323 (1982), *aff'd mem. sub nom., Arcudi v. Stone & Webster Eng'g Corp.*, 463 U.S. 1220 (1983), in which it had ruled preempted a state statute requiring employers who provide health insurance to their employees also to provide health insurance to injured workers. That earlier statute had required employers to provide such benefits by altering their ERISA-covered plans and did not give them the option, found critical in *Shaw*, of establishing a plan solely for the purpose of complying with the workers' compensation law.

Like the law held not preempted in *Donnelley*, the District's Equity Amendment Act does not require an employer to alter its ERISA-covered employee welfare benefit plan, but simply provides that an employer, otherwise subject to the District's workers' compensation law, shall provide health insurance in addition to benefits already required to be provided to employees who receive or who are eligible to receive workers' compensation. Furthermore, the Equity Amendment Act permits an employer to comply with its terms by establishing an administrative unit that is separate from its ERISA-covered plan. As the Second Circuit ruled in *Donnelley*, under *Shaw*, there is no preemption bar to this Act. Instead, the Act is well within the workers' compensation laws that Congress expressly declined to preempt in ERISA.

CONCLUSION

The decision of the court of appeals in this case, interpreting an important federal statute in a manner that restricts the powers of the States and the District of Columbia to enact workers' compensation, unemployment compensation, and disability insurance laws, is in direct conflict

with a decision of this Court and a decision of the Second Circuit. This petition should be granted to resolve these conflicts, both to ensure uniform application of ERISA and to restore to the States and the District the powers reserved to them by ERISA in the important areas of workers' compensation, unemployment compensation, and disability insurance laws.

Respectfully submitted,

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APPENDIX A

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 22, 1991 Decided November 15, 1991

No. 91-7061

GREATER WASHINGTON BOARD OF TRADE, APPELLANT

v.

DISTRICT OF COLUMBIA
and SHARON PRATT DIXON, APPELLEES

Appeal from the United States District Court
for the District of Columbia

(Civil Action No. 91-00511)

Lawrence P. Postol for appellant.

Donna M. Murasky, Assistant Corporation Counsel, Office of the Corporation Counsel, with whom *John Payton*, Corporation Counsel, and *Charles L. Reischel*, Deputy Corporation Counsel, were on the brief for appellees. *Martin B. White*, Counsel, Office of the Corporation Counsel, also entered an appearance for appellees.

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

Before MIKVA, *Chief Judge*, WALD and BUCKLEY, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* WALD.

WALD, *Circuit Judge*: Appellant Greater Washington Board of Trade ("Board") is a nonprofit corporation that provides health insurance to its employees. The Board brought suit against appellees District of Columbia ("District") and Mayor Sharon Pratt Dixon seeking an injunction against the enforcement of a provision of the District of Columbia Workers' Compensation Equity Amendment Act of 1990 (D.C. Act 8-261) ("Equity Amendment Act" or "Act"), 37 D.C. Reg. 6890 (1990) (codified in scattered sections of D.C. CODE ANN. §§ 36-301 to -342.1 (Supp. 1991)). The Board claimed that section 2(c)(2) of the Equity Amendment Act was preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"), § 514(a), 29 U.S.C. § 1144(a) (1988).¹ Appellees filed a motion to dismiss the complaint, arguing that the Act was not preempted by ERISA. On March 27, 1991, the district court granted appellees' motion to dismiss and denied the Board's motion for a preliminary injunction. See *Greater Wash. Bd. of Trade v. District of Columbia*,

¹Appellant conceded at oral argument that it was no longer pressing the alternative argument that Congress never contemplated in 1974, when exempting workers' compensation plans from ERISA coverage, see 29 U.S.C. § 1003(b)(3) (1988), that such plans would include mandated health benefits. The Supreme Court found a similar argument with respect to "innovative" insurance contracts unpersuasive:

The presumption is against pre-emption, and we are not inclined to read limitations into federal statutes in order to enlarge their preemptive scope. Further, there is no indication in the legislative history that Congress had such a distinction [between traditional and innovative insurance laws] in mind.

Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 741 (1985). We agree that "innovative" workers' compensation plans should be treated the same as other "workers' compensation plans" within the meaning of ERISA.

No. 91-00511 (D.D.C. Mar. 27, 1991) ("Memorandum Opinion") at 2. Because we find that the plain meaning of ERISA's preemption provision as well as the policies and purposes furthered by ERISA preemption compel the conclusion that section 2(c)(2) of the Equity Amendment Act is preempted, we reverse.

I. BACKGROUND

A. *The Equity Amendment Act*

The Equity Amendment Act became effective on March 6, 1991.² The Act amended portions of the District's workers' compensation law, D.C. CODE ANN. §§ 36-301 to -345 (1981 & Supp. 1991), "in order to promote a fairer system of compensation, facilitate a more expeditious processing of claims, and establish a Commission to study the procedure and method of ratemaking for workers' compensation insurance," Equity Amendment Act preamble. Although the Act amended several sections of the workers' compensation law, the only relevant provision on this appeal is the following:

(1) Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this act.

....

²Pursuant to the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, § 602(c)(1), 87 Stat. 774, 814 (1973) (codified as amended at D.C. CODE ANN. § 1-233(c)(1) (1981)), the Council of the District of Columbia ("Council") is required to transmit an act, once it has been signed by the mayor, to Congress. The act will become law within thirty days unless Congress adopts a concurrent resolution disapproving it. The Council transmitted the Equity Amendment Act to Congress on January 11, 1991; no concurrent resolution having been passed, the Act became D.C. Law 8-198 on March 6, 1991. See Notice, 38 D.C. Reg. 1752 (1991).

(3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

Equity Amendment Act § 2(c)(2) (codified at D.C. CODE ANN. § 36-307(a-1)(1), (3) (Supp. 1991)). By its terms, the Act requires employers to provide health benefits to employees eligible for workers' compensation benefits only if the employers already provide health benefits under a different plan.

The original version of the bill did not require employers to provide benefits to employees receiving workers' compensation; however, a substitute bill containing the provision for health benefits was passed by the Committee on Housing and Economic Development on July 6, 1990.³ Section 2(c)(2) of the substitute bill read as follows:

Any employer who provides health insurance coverage for an employee shall *maintain the health insurance coverage of the employee* while the employee receives or is eligible to receive workers' compensation benefits under this act.

D.C. Bill 8-74 (as amended), § 2(c)(2) (1990) (emphasis added).⁴ The Council amended the bill once again before it was passed. The portion of the substitute bill italicized above was replaced by the language eventually included in the Act:

Any employer who provides health insurance coverage for an employee shall *provide health insurance coverage equivalent to the existing health insurance coverage of the employee* while the employee receives

³For the legislative history of the Act up to the point that it was reported to the Council, see COMM. ON HOUS. AND ECONOMIC DEV., REPORT TO THE COUNCIL OF THE DISTRICT OF COLUMBIA ON THE "DISTRICT OF COLUMBIA WORKERS' COMPENSATION EQUITY AMENDMENT ACT OF 1990," BILL 8-74 (July 6, 1990) ("REPORT ON BILL 8-74").

⁴The substitute bill is reprinted as Attachment F in REPORT ON BILL 8-74, *id.*

or is eligible to receive workers' compensation benefits under this act.

Equity Amendment Act § 2(c)(2) (codified at D.C. CODE ANN. § 36-307(a-1)(1) (Supp. 1991)) (emphasis added).

B. ERISA

ERISA was enacted in 1974 as a statutory scheme the primary purpose of which was to protect

the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

ERISA § 2(b) (codified at 29 U.S.C. § 1001(b) (1988)). ERISA defines an "employee benefit plan" as either an employee *welfare* benefit plan—which generally provides for some combination of medical, health, sickness, accident, disability, death, or unemployment benefits—or an employee *pension* benefit plan—which generally provides for retirement income. *Id.* § 3(1)-(3) (codified at 29 U.S.C. § 1002(1)-(3) (1988)).

Section 514(a) of ERISA expressly provides for the preemption of state law:

Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b).

Id. § 514(a) (codified at 29 U.S.C. § 1144(a) (1988)).⁵

⁵Subsection (b) of section 514 provides for various exceptions to the general preemption provision, the most significant of which is the so-called "saving" clause: "Except as provided in subpara-

The scope of ERISA's coverage, and the exceptions to that coverage, are defined in section 4:

(a) Except as provided in subsection (b) and in sections 201, 301, and 401 [provisions defining coverage more narrowly for certain purposes], this title shall apply to any employee benefit plan if it is established or maintained—

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) The provisions of this title shall not apply to any employee benefit plan if—

....

(3) such plan is maintained solely for the purpose of complying with applicable work[ers'] compensation laws or unemployment compensation or disability insurance laws.

Id. § 4 (codified at 29 U.S.C. § 1003 (1988)).

graph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." ERISA § 514(b)(2)(A) (codified at 29 U.S.C. § 1144(b)(2)(A) (1988)). Subparagraph (B) is the so-called "deemer" clause, and it provides that no covered plan or trust created under such plan shall be deemed to be an insurance or banking company for purposes of any law of any state purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies. *See id.* § 514(b)(2)(B) (codified at 29 U.S.C. § 1144(b)(2)(B) (1988)); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 45 (1987).

II. DISCUSSION

A. Preemption

Although the Supremacy Clause⁶ invalidates state laws that "interfere with, or are contrary to the laws of Congress," *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824), the exercise of federal supremacy is not lightly to be presumed. *See Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 522 (1981); *New York State Dep't of Social Servs. v. Dublino*, 413 U.S. 405, 413 (1973). In deciding whether a federal law preempts a state statute, the court's task "is to ascertain Congress' intent in enacting the federal statute at issue." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95 (1983). Preemption "may be either express or implied, and [it] 'is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.'" *Fidelity Fed. Sav. & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 152-53 (1982) (quoting *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977)).

1. Legislative History

Congress expressly provided in section 514(a) of ERISA for federal preemption of all state laws that "relate to" ERISA-covered plans. In favorably reporting the bill to the full Senate, the Committee on Labor and Public Welfare explained that

[b]ecause of the interstate character of employee benefit plans, the Committee believes it essential to provide for a uniform source of law in the areas of vesting, funding, insurance and portability standards, for evaluating fiduciary conduct, and for creating a single reporting and disclosure system in lieu of burdensome multiple reports.

S. Rep. No. 127, 93d Cong., 1st Sess. 35 (1973), reprinted in 1974 U.S.C.C.A.N. 4838, 4871.⁷ Similarly, the House

⁶U.S. CONST. art. VI, cl. 2.

⁷The legislative history of ERISA has been compiled and published in a three-volume set. Senate Report No. 127 is reprinted in 1 SUBCOMM. ON LABOR OF THE SENATE COMM. ON LABOR AND PUB. WELFARE, 94th CONG., 2d SESS., LEGISLATIVE HISTORY OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, at 587, 621 (Comm. Print 1976) ("ERISA LEGISLATIVE HISTORY").

Committee on Education and Labor observed that "it is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying laws." H.R. Rep. No. 533, 93d Cong., 1st Sess. 12 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4650.⁸

Although both the House and Senate recognized the need for broad federal preemption in the area of employee benefit plans, the original bills contained preemption language significantly narrower than the version ultimately adopted by Congress. The earlier Senate version provided only for the preemption of all state laws that "relate to the subject matters regulated by this Act or the Welfare and Pension Plans Disclosure Act." H.R. 2 (Senate version), 93d Cong., 2d Sess. § 699(a) (1974).⁹ The House version preempted only those laws that "relate to the reporting and disclosure responsibilities, and fiduciary responsibilities, of persons acting on behalf of any employee benefit plan to which part 1 applies." H.R. 2 (House version), 93d Cong., 2d Sess. § 514(a) (1974).¹⁰

The Conference Committee rejected both the House and Senate formulations in favor of the broader preemption language contained in the present statute, explaining that

[u]nder the substitute, the provisions of title I are to supersede all State laws that relate to any employee benefit plan that is established by an employer engaged in or affecting interstate commerce or by an employee organization that represents employees engaged in or affecting interstate commerce. (However, following title I generally, preemption will not apply to government plans, church plans ...

⁸The House Report is also reprinted in 2 *id.* at 2348, 2359.

⁹The Senate bill is reprinted in 3 ERISA LEGISLATIVE HISTORY, *supra* note 7, at 3599, 3820.

¹⁰The House bill is reprinted in 3 ERISA LEGISLATIVE HISTORY, *supra* note 7, at 3898, 4057-58.

work[ers'] compensation plans, non-U.S. plans primarily for nonresident aliens, and so called "excess benefit plans.").

H.R. Conf. Rep. No. 1280, 93rd Cong., 2d Sess. 383 (1974), *reprinted in* 1974 U.S.C.C.A.N. 5038, 5162.¹¹ Representative Dent, ERISA's principal sponsor in the House, spoke in support of the Conference version of the bill:

Finally, I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation.

120 CONG. REC. 29,197 (1974).¹²

2. Judicial Interpretation

Section 514(a) "is conspicuous for its breadth. It establishes as an area of exclusive federal concern the subject of every state law that 'relate[s] to' an employee benefit plan governed by ERISA." *FMC Corp. v. Holliday*, 111 S. Ct. 403, 407 (1990). A law relates to an employee benefit plan, "in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739 (1985). Under this common-sense meaning of the words, "a state law may 'relate to' a benefit plan, and thereby be pre-empted, even if the law is not specifically designed to affect such plans, or the effect is only indirect." *Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478, 483 (1990). While it is true

¹¹The Conference Report is also reprinted in 3 ERISA LEGISLATIVE HISTORY, *supra* note 7, at 4277, 4650.

¹²The House floor debates are reprinted in 3 ERISA LEGISLATIVE HISTORY, *supra* note 7, at 4657, 4670; *see also* 120 CONG. REC. 29,933 (1974) (remarks of Senator Williams, principal sponsor of bill in Senate), *reprinted in* 3 ERISA LEGISLATIVE HISTORY, *supra* note 7, at 4731, 4745-46.

that "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan," *Shaw*, 463 U.S. at 100 n.21, the Supreme Court has concluded "that state laws which make 'reference to' ERISA plans are laws that 'relate to' those plans within the meaning of § 514(a)." *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 829 (1988) (holding that state law relates to ERISA-covered plan when it provides that plans subject to the provisions of ERISA shall not be subject to the process of garnishment); *Metropolitan Life*, 471 U.S. at 739 (holding that state law relates to ERISA-covered plan when it requires all benefit plans to purchase specified mental-health benefits when they purchase a certain common insurance policy).¹³

A conclusion that a law "relates to" an ERISA-covered plan does not end the preemption inquiry, however. Once a court determines that section 514(a) has been satisfied, it must then check to see whether the law is nonetheless exempt from preemption under section 514(b). See *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 35, 48 (1987). Only if the law does not qualify for an exemption from preemption under section 514(b) is it correct to conclude that the law which "relates to" an ERISA plan is preempted.¹⁴

B. The District Court's Decision

The district court in this case concluded that the Equity Amendment Act "relates to" an ERISA-covered employee benefit plan "because benefits under the Act are set by

¹³We agree with the Fifth Circuit that the "*Shaw* 'exception'—that ERISA does not preempt state laws which affect benefit plans in a tenuous or peripheral manner—applies only to laws of general application; it does not protect state laws which specifically refer to ERISA benefit plans." *In re Dyke*, 943 F.2d 1435, 1448 (5th Cir. 1991).

¹⁴The categories of exempted laws under section 514(b) include state criminal laws and laws regulating insurance, banking, and securities. See *supra* note 5 (discussing "saving" clause); see also *infra* note 27 (discussing exemption for Hawaii's Prepaid Health Care Act).

reference to covered employee benefit plans." Memorandum Opinion at 3. Indeed, appellees do not dispute that the Equity Amendment Act "relates to" an ERISA-covered employee benefit plan.¹⁵

The district court implicitly recognized that the Equity Amendment Act relates, in fact, to two different plans: First, the Act "relates to" an ERISA-covered plan by requiring that the new benefits be "equivalent" to those already provided under an existing covered plan and by defining the employers who are obliged to provide the new benefits as those who already provide benefits under a covered plan. Second, by requiring new benefits to be provided to employees who have been injured on the job, the Act "relates to" a workers' compensation plan that is, by virtue of the exemption for such plans under section 4(b)(3), exempt from ERISA coverage. So, the Act relates both to an ERISA-covered plan and to a plan that is exempt from ERISA coverage.

The district court relied on *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), for the argument that because the Act related to a plan that was exempt from ERISA coverage, it was saved from preemption. In *Shaw*, the Court considered whether New York's Disability Benefits Law was preempted by ERISA.¹⁶ The Court found that

¹⁵See Brief for Appellees (filed Sept. 6, 1991) at 19-20.

¹⁶The 1983 version of the Disability Benefits Law provided, in pertinent part, that

[t]he weekly benefit which the disabled employee is entitled to receive for disability commencing on or after July first, nineteen hundred seventy-four shall be one-half of the employee's average weekly wage, but in no case shall such benefit exceed ninety-five dollars nor be less than twenty-dollars

N.Y. WORK. COMP. § 204.2 (McKinney 1982-83); see *Shaw*, 463 U.S. at 90 n.4. The Court also faced the question of whether ERISA preempted New York's Human Rights Law. The Court held that the Human Rights Law was preempted only insofar as it prohibited practices that were lawful under federal law. This aspect of the *Shaw* decision is not relevant to our consideration of the issues now before us.

where the law gives employers the option of establishing a separate benefit plan that is exempt from ERISA coverage under section 4(b), such a law would not be preempted.¹⁷ But the state law in *Shaw* related only to an employee disability insurance plan. Relying on the earlier case of *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 n.20 (1981), the Court in *Shaw* concluded that where a law relates to a plan that is explicitly exempt from ERISA coverage under section 4(b)—as are all plans maintained solely to comply with disability insurance (and workers' compensation) laws—that law is not preempted. But in our case, as we have already observed, the Equity Amendment Act relates to two plans—one that is ERISA covered and one that is exempt from ERISA coverage. Had the Equity Amendment Act related only to the workers' compensation plan—had it, for example, made no reference to existing ERISA-covered plans and simply required all employers to provide specified minimum health benefits for employees receiving workers' compensation—it would clearly have survived preemption under the principles announced in *Shaw*.

The key issue in distinguishing *Shaw* from this case is that the Court in *Shaw* never found that the New York Disability Benefits Law related to an *ERISA-covered* plan. The Court did find that the Disability Benefits Law plainly related to an "employee benefit plan," *Shaw*, 463 U.S. at 106, but a law is preempted under section 514(a) only if it relates to an employee benefit plan *that is not exempt*. The plan to which the New York Disability Bene-

¹⁷The Court in *Shaw* recognized that "Congress surely did not intend, at the same time it preserved the [e] of state disability laws, to make enforcement of those laws impossible. A State may require an employer to maintain a disability plan complying with state law as a separate administrative unit." *Shaw*, 463 U.S. at 108. The Court explained further that "while the State may not require an employer to alter its ERISA plan, it may force the employer to choose between providing disability benefits in a separately administered plan and including the state-mandated benefits in its ERISA plan." *Id.*

fits Law related *was* exempt, so the law did not even qualify at the threshold for preemption.

Shaw would have governed this case had the Equity Amendment Act related only to the exempt plan; in that case, the Act would not have been preempted. But *Shaw* does not tell us why an Act that relates to an ERISA-covered plan can avoid preemption simply because it also relates to a plan exempt from ERISA coverage. Not only is there no authority in *Shaw* for this proposition, but it is entirely at odds with ERISA's statutory structure.

Once it is determined that a state law "relates to" an employee benefit plan covered by ERISA, the only escape from preemption is by way of the exemption provisions contained in section 514(b). But no one suggests that the Equity Amendment Act is a criminal law or one regulating insurance, banking, or securities. In purporting to find the source of the exemption to preemption in section 4(b), the district court has misconstrued the statutory scheme. Section 514(a) preempts all state laws that "relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b)," ERISA § 514(a) (codified at 29 U.S.C. § 1144(a) (1988)). Section 4 is the section defining the scope of ERISA coverage. ERISA covers all employee benefit plans (as they are broadly defined in section 4(a)) with the limited exception of the plans explicitly enumerated in section 4(b). The phrase "and not exempt under section 4(b)" is not like the laws described in section 514(b); it is not an exemption to preemption but rather part of the definition of an ERISA-covered plan. In other words, when section 514(a) preempts all laws relating to "employee benefit plans described in section 4(a) and not exempt under section 4(b)," it means that it is preempting all laws relating to employee benefit plans covered by ERISA.¹⁸

¹⁸The phrase "employee benefit plan described in section 4(a) and not exempt under section 4(b)" is not unique to the preemption provision. Indeed, a variation of this phrase is used throughout ERISA whenever it defines with greater precision the scope

In upholding the Equity Amendment Act, the district court reached the same conclusion as that of the Second Circuit in *R.R. Donnelley & Sons Co. v. Prevost*, 915 F.2d 787 (2d Cir. 1990), *cert. denied*, 111 S. Ct. 1415 (1991). In *Donnelley*, the court considered the question of whether a virtually identical state workers' compensation law was preempted under ERISA, and it held that the statute was not preempted.¹⁹ The *Donnelley* court distinguished its prior decision in *Stone & Webster Engineering Corp. v. Ilesley*, 690 F.2d 323 (2d Cir. 1982), *aff'd mem. sub nom. Arcudi v. Stone & Webster Engineering Corp.*, 463 U.S. 1220 (1983), which had held that an earlier statute was preempted because it had required employers to extend coverage under their existing health plan to employees receiving workers' compensation payments.²⁰ In contrast,

of coverage for a particular part. *See, e.g.*, ERISA § 201 (codified at 29 U.S.C. § 1051 (1988)) ("This part [concerning participation and vesting of pension plans] shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b))"); *see also* ERISA § 301(a) (codified at 29 U.S.C. § 1081(a) (1988)) (concerning funding of pension plans); ERISA § 401(a) (codified at 29 U.S.C. § 1101(a) (1988)) (concerning fiduciary responsibility of plan administrators).

¹⁹At issue in *Donnelley* was a Connecticut statute that required any employer

who provides accident and health insurance or life insurance coverage for any employee or makes payments or contributions at the regular hourly or weekly rate for full-time employees to an employee welfare fund ... [to] provide to such employee equivalent insurance coverage or welfare fund payments or contributions while the employee is eligible to receive or is receiving workers' compensation payments pursuant to this chapter

CONN. GEN. STAT. § 31-284b(a) (1987); *see Donnelley*, 915 F.2d at 788 n.1.

²⁰The statute held to be preempted in *Stone & Webster* provided that no employer

shall cancel or withhold accident and health insurance or life insurance coverage of any employee or his dependents or

the statute held not to be preempted in *Donnelley* permitted employers to provide the new coverage through separate plans administered independently from existing ERISA plans. In distinguishing *Stone & Webster*, the *Donnelley* court relied on *Shaw*.

But the Second Circuit focused on only half the story. By concentrating on how and in what ways the new workers' compensation plans would be exempt from ERISA coverage, the court failed to appreciate the fact that the Connecticut statute (like the Equity Amendment Act in this case) related to an ERISA-covered plan by tying the new benefits to existing benefits and by limiting the law's applicability to employers already providing benefits through ERISA plans.²¹ The statute at issue in *Donnelley* is indistinguishable from the Equity Amendment Act.²²

cease to make payments or contributions at the regular hourly or weekly rate for full-time employees for each week of disability to an employee's welfare fund ... while the employee is eligible to receive or is receiving workers' compensation payments

CONN. GEN. STAT. § 31-51h(a) (1981) (repealed 1982); *see Stone & Webster*, 690 F.2d at 324 n.1; *see also Fixx v. United Mine Workers*, 645 F. Supp. 352 (S.D. W. Va. 1986) (relying on *Stone & Webster* for conclusion that similar West Virginia disability medical insurance provision was preempted).

²¹According to appellant's counsel, there is a question as to whether or not this argument was ever made to the Second Circuit in *Donnelley*. It does appear to have been raised in the petition for certiorari, which was denied on April 1, 1991, 111 S. Ct. 1415 (1991). *See* Transcript of Hearing on Pending Motions (D.D.C. Mar. 26, 1991) ("Transcript") at 14-16.

²²The record reflects the fact that the District modelled the Equity Amendment Act on the Connecticut statute which was held not to be preempted in *Donnelley*:

By the time the statute was passed in October, the Council—and you can see it in their records—was aware of *Donnelley*, at least the district court opinion in *Donnelley*, and changed the language from "maintaining benefits under the old plan," which would clearly have been pre-empted, to "providing benefits that are equal to the old plan."

See Transcript, *supra* note 21, at 9.

Based on a plain reading of ERISA, we disagree with the conclusion of the Second Circuit in *Donnelley* and conclude that the district court in this case erred in holding that the Equity Amendment Act was not preempted.

C. Policy and Purpose

Not only do the plain meaning and structure of ERISA itself require the conclusion that the Equity Amendment Act is preempted, but this result also furthers the broad purposes of ERISA preemption. As the Supreme Court has explained,

ERISA's pre-emption provision was prompted by recognition that employers establishing and maintaining employee benefit plans are faced with the task of coordinating complex administrative activities. A patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them.

Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 11 (1987).²³ This concern for minimizing the burden on the administration of ERISA-covered plans is reflected in the decision of the Court in *Shaw*, where it held that the Disability Benefits Law was preempted to the extent that it applied to benefits provided under a multibenefit plan: "An employer with employees in several States would find its plan subject to a different jurisdictional pattern of regulation in each State, depending on what benefits the State mandated under disability, work[ers'] compensation, and unemployment compensation laws." *Shaw*, 463 U.S. at 107.

²³*Fort Halifax* held that a Maine severance-pay statute was not preempted because it did not relate to an employee benefit plan. The Court determined that the Maine statute did not relate to a plan as described in section 4(a). It never reached the alternative argument that the plan was exempt from ERISA coverage under section 4(b). See *Fort Halifax*, 482 U.S. at 6 n.4.

Appellees insist that the Equity Amendment Act would not impose any of these administrative burdens because it allows for the provision of health benefits through a separate plan that employers could administer independently of their ERISA-covered plans. But appellees may underestimate the burden imposed. While it is certainly true that the Equity Amendment Act does not require employers to alter ERISA-covered plans, it explicitly ties the benefit levels of the workers' compensation plan to those of the ERISA-covered plan. In contrast to general state statutes that have only an incidental effect on the administration of ERISA plans, see, e.g., *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825 (1988) (holding that state's garnishment statute is not preempted by ERISA),²⁴ the Equity Amendment Act could have a serious impact on the administration and content of the ERISA-covered plan. The fact that the benefits to be provided to an employee receiving workers' compensation will be equivalent to the benefit levels provided while the employee is fully employed means that every time an employer considers changing the benefits under its ERISA-covered plan, it would have to consider the effect that such a change would have on its unique obligations to its District employees receiving workers' compensation.²⁵ In light of the additional financial burden associated with an increase in ERISA health benefits, an employer might choose to forego such an increase altogether. This could have a substantial effect on the administration of an ERISA-covered plan.

As the Court emphasized in *Fort Halifax*, the central concern of the ERISA preemption provision is to avoid

²⁴*Mackey* stands for the proposition that "[t]he fact that collection might burden the administration of a plan [does] not, by itself, compel pre-emption," *Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478, 483 (1990).

²⁵For the purposes of the District's workers' compensation law, an "employer" is defined as "any individual, firm, association, or corporation . . . using the service of another for pay within the District of Columbia." D.C. CODE ANN. § 36-301(10) (1981).

subjecting ERISA-covered plans to various and differing state regulations. *Fort Halifax*, 482 U.S. at 9. In trying to avoid the obvious preemption problem with requiring employers to extend their existing ERISA plans to employees receiving workers' compensation, see *Stone & Webster Engineering Corp. v. Ilesley*, 690 F.2d 323 (2d Cir. 1982), *aff'd mem. sub nom. Arcudi v. Stone & Webster Engineering Corp.*, 463 U.S. 1220 (1983), appellees have now tried to regulate indirectly what they were forbidden to regulate directly. By requiring employers to take into account the effects that any general decisions about ERISA benefits would have on their responsibilities to their injured employees in the District of Columbia, the District has inevitably affected the administration of an ERISA plan.

But even if it were true that the administration of the ERISA plan would be unaffected by the operation of the Equity Amendment Act, ERISA does not only preempt laws which have such an administrative effect. In *Standard Oil Co. v. Agsalud*, 633 F.2d 760 (9th Cir. 1980), *aff'd mem.*, 454 U.S. 801 (1981), the court affirmed the district court's holding that Hawaii's Prepaid Health Care Act ("Hawaii Act"), HAW. REV. STAT. §§ 393-1 to -51 (1976),²⁶ was preempted by ERISA:

²⁶The Hawaii Act requires employers in that state to provide their employees with a comprehensive health care plan. The state argued that ERISA only preempts laws purporting to regulate private *voluntary* benefit plans. Because the Hawaii Act required employers to provide benefits, the state contended that the plans were beyond ERISA's scope. The Ninth Circuit rejected this argument, holding that "[t]he plans envisioned under the Hawaii statute are . . . not rendered outside the definition of employee welfare benefit plans simply because Hawaii has attempted to make them mandatory." *Agsalud*, 633 F.2d at 764. The court also rejected the state's contention that the Hawaii Act was a "disability insurance law" and therefore exempt from ERISA coverage under section 4(b)(3). The Hawaii Act was concerned with providing benefits "regardless of any relationship to a disabling condition," *id.*

Appellants in the district court argued that since ERISA was concerned primarily with the administration of benefit plans, its provisions were not intended to prevent the operation of laws like the Hawaii Act pertaining principally to benefits rather than administration. There is, however, nothing in the statute to support such a distinction between the state laws relating to benefits as opposed to administration.

Agsalud, 633 F.2d at 765.²⁷ The Court made the same observation in *Fort Halifax*:

[S]tate laws requiring the payment of benefits also "relate to a[n] employee benefit plan" if they attempt to dictate what benefits shall be paid under a plan. To hold otherwise would create the prospect that plan administration would be subject to differing requirements regarding benefit eligibility and benefit levels—precisely the type of conflict that ERISA's pre-emption provision was intended to prevent.

Fort Halifax, 482 U.S. at 13 n.8.

It is, of course, evident that many different kinds of state laws may affect an employer's decisions concerning the scope and content of its benefit plans. Congress could have decided to preempt all state laws that "might conceivably have an effect upon" ERISA-covered employee benefit plans, but it chose to draw the line elsewhere. It required that the law specifically "relate to" the ERISA-covered plan—*i.e.*, that it have "a connection with or reference to such a plan." *Shaw*, 463 U.S. at 97. This provision may preempt more than appellees would like, but to the extent that it does, their argument is with Congress and not with us.

²⁷Congress amended section 514(b) of ERISA in response to *Agsalud* by explicitly exempting Hawaii's Prepaid Health Care Act from ERISA preemption. See Act of Jan. 14, 1983, Pub. L. No. 97-473, § 301(a), 96 Stat. 2605, 2611-12 (codified at 29 U.S.C. § 1144(b)(5) (1988)).

III. CONCLUSION

For the reasons stated above, the decision of the district court is reversed, and the case is remanded to the district court for further proceedings.

It is so ordered.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 91-0511-LFO

THE GREATER WASHINGTON BOARD OF TRADE,
Plaintiff,

v.

DISTRICT OF COLUMBIA AND
SHARON PRATT DIXON,
Defendants.

MEMORANDUM

On October 24, 1990, Mayor Barry signed into law the District of Columbia Worker's Compensation Equity Amendment Act of 1990 (the "Act"). See Act of October 24, 1990, D.C. Act 8-261 (to be codified as D.C. Code § 36-307(a-1)), reprinted in *District of Columbia Register*, November 2, 1990, at 6890. After a period of congressional review, the Act became effective on March 6, 1991, though regulations implementing it have yet to be promulgated. The pertinent section of the Act requires employers to extend "equivalent" health insurance coverage to employees eligible to receive workers' compensation benefits:

Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this act.

Act § 2(c)(2) (to be codified at D.C. Code § 36-307(a-1)(1)). This coverage is to extend for no more than 52 weeks and is to "be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits." *Id.* (to be codified at D.C. Code § 36-307(a-1)(3)).

Plaintiff Greater Washington Board of Trade ("Board of Trade"), a non-profit corporation that provides health insurance to its employees, now sues to enjoin enforcement of this statute on the grounds that the Act is preempted by the Employee Retirement Income Security Act of 1974 (ERISA). See 29 U.S.C. § 1001 *et seq.* (1988). Currently before the Court is the Board of Trade's application for a preliminary injunction and the District of Columbia's motion to dismiss. Although the Board had only four days in which to respond to the District's quite through briefings, at oral argument on March 26, 1991 the Board asked the Court to render judgment in order to expedite consideration of this matter. For the reasons stated below, the District's motion will be granted and the Board's application for a temporary restraining order denied.

I

ERISA's preemption clause provides:

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

29 U.S.C. § 1144(a). This preemption clause "is conspicuous for its breadth." *FMC Corp. v. Holliday*, 111 S.Ct. 403, 407 (1990). "Its deliberately expansive language was designed to establish pension plan regulation as exclusively a federal concern." *Ingersoll-Rand Co. v. McClendon*, 111 S.Ct. 478, 482 (1990) (quotations and quotation marks omitted). The Board contends, and D.C. concedes, that the Act falls within the broad coverage of this clause because benefits under the Act are set by reference to covered employee benefit plans. See, e.g., *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 86-87 (1983) ("A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with

or reference to such a plan.") (footnote omitted). The question then is whether the Act falls within one of the preemption clause's exemptions.

One of those exemptions involves laws relating to plans covered by section 1003(b).^{*} See 29 U.S.C. § 1144(a) (preempting state laws relating to covered plans only if such plans are "not exempt under section 1003(b)") (emphasis added). The pertinent subsection covers plans "maintained solely for the purpose of complying with applicable work[ers'] compensation laws or unemployment compensation or disability insurance laws." *Id.* § 1003(b)(3). The test for determining whether a plan is "maintained solely" for the purpose of complying with a workers' compensation law is "whether the plan, as an administrative unit, provides only those benefits required by the applicable state law." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. at 107. Thus, states cannot directly regulate existing pension plans through workers' compensation laws: Plans which are voluntarily negotiated and "more broadly serve employee needs as a result of collective bargaining" are not covered by section 1003(b). *Alessi v. Raybestos-Manhattan*,

^{*} That section provides in full:

The provisions of this subchapter shall not apply to any employee benefit plan if —

- (1) such plan is a governmental plan (as defined in section 1002(32) of this title);
- (2) such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under section 410(d) of Title 26;
- (3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;
- (4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or
- (5) such plan is an excess benefit plan (as defined in section 1002(36) of this title) and is unfunded.

29 U.S.C. § 1003(b).

Inc., 451 U.S. 504, 523 n.20 (1981). However, a state workers' compensation law need not require employers to create independent plans. It is enough if the law gives employers the option of doing so:

The fact that state law permits employers to meet their state law obligations by including disability benefits in a multibenefit plan does not make the state law wholly unenforceable as to employers who choose that option.

In other words, while the State may not require an employer to alter its ERISA plan, it may force the employer to choose between providing disability benefits in a separately administered plan and including the state-mandated benefits in its ERISA plan.

Shaw v. Delta Air Lines, Inc., 463 U.S. at 108 (citations omitted).

The Act falls squarely within this exemption. Although the Board has not specified how it plans to comply with the Act, it is clear from the Act that it could do so by creating a "separate administrative unit" to administer the required benefits. The Act only instructs employers to "provide health insurance coverage equivalent to the existing health insurance coverage." Act § 2(c)(2). It does not specify how they are to do so. To the contrary, when first introduced the Act required employers to "maintain" existing health care coverage; the D.C. City Council then amended the Act to only require the provision of "equivalent" health insurance coverage. See Defendant's Exhibit 1. As a consequence, under *Shaw*, the Board's plan for complying with the Act would be one maintained solely to comply with a state workers' compensation law.

A recent decision from another circuit involving a nearly identical statute reached the same result. In *R.R. Donnelley & Sons Co. v. Prevost*, 915 F.2d 787 (2d. Cir. 1990), the Second Circuit considered a Connecticut statute requiring

employers who provide health insurance to an employee to "provide such employee *equivalent* insurance coverage or welfare fund payments or contributions while the employee is eligible to receive or is receiving workers' compensation payments" Conn. Gen. Stat. § 31-284b(a) (1989) (emphasis added). The Second Circuit found that, although the Connecticut law was subject to ERISA's preemption clause, see *Donnelley*, 915 F.2d at 791-92, it fell under section 1003(b)(3)'s exemption for plans maintained solely to comply with workers' compensation laws:

In keeping with, and in apparent reliance upon, the above language in *Shaw*, the State of Connecticut allows an employer under the second option in section 31-284b(b) to "creat[e] an injured employee's plan as an extension of any existing plan for working employees." Such a plan would constitute a "separate administrative unit" within the meaning of *Shaw*, designed "solely for the purpose of complying with [the] applicable workmen's compensation law[]" within the meaning of section 1003(b)(3).

Id. at 793.

B.

The Board contends that *Donnelley* was wrongly decided because the plan in *Donnelley*, like the one at issue here, relates to another ERISA plan. It is not entirely clear what the Board means by this. It might mean that the applicable workers' compensation law is preempted whenever [it] relates to a covered plan regardless of whether the plan is exempt under section 1003(b)(3). Or it might mean that the Board's plan does not qualify for the exemption under section 1003(b)(3) because that plan is itself related to another ERISA plan. It is not, however, necessary to clarify the Board's position because neither contention is persuasive.

The plain language of the statute and the clear holdings of the Supreme Court establish that a workers' compensation law related to an ERISA plan is not preempted if that plan is maintained solely to comply with that law. The

preemption clause contemplates that laws saved by this exemption will relate to ERISA plans: It preempts state laws relating to plans "described in section 1003(a) of this title and not exempt under section 1003(b)." 29 U.S.C. § 1144(a) (emphasis added). Thus, laws related to plans covered by ERISA, but exempt under section 1003(b) are not preempted. As the Supreme Court characterized it in *Alessi*, section 1003(b)(3) is an "exemption" to the preemption clause. See *Alessi*, 451 U.S. at 523 n. 21. Under the Board's interpretation, section 1003(b)(3) would not be an exemption to the preemption clause. It would be irrelevant because any law not relating to a covered plan would not be subject to preemption in the first place. Moreover, the Board's interpretation is clearly contradicted by the Supreme Court's decision in *Shaw*. In that case, the Court found that while New York's Disability Benefits Law was "a state law relating to employee benefits plans," it was not preempted because it related to plans exempt from ERISA under section 1003(b)(3). See *Shaw*, 463 U.S. at 106-109.

The Board attempts to distinguish *Shaw* on the ground that the plan at issue in that case did not, as here, incorporate the provisions of another ERISA covered plan. It is difficult to see how this distinction makes a difference. The logic seems to be that there is an implied exception in the section 1003(b)(3) exemption for plans which, though maintained solely to comply with a state workers' compensation law, refer directly to unexempted plans. The problem with this interpretation is that there is no support for it in the statute. Nothing in section 1003(b)(3) indicates that plans relating to other plans are, as it were, exempted from the exemption. It merely states that plans "maintained solely for the purpose of complying with work[ers'] compensation laws" are exempt. Because the "exercise of federal supremacy is not lightly to be presumed," state statutes are not to be preempted "in the absence of persuasive reasons." *Alessi*, 451 U.S. at 522 (quotations and quotation marks omitted). As a consequence, the Board's contention must be rejected.

At points, the Board suggests that an exception to the exemption can be inferred from *Alessi*, but upon analysis that argument must be rejected well. In the first place, *Alessi* only discusses section 1003(b)(3) in a single footnote. The issue in front of the Supreme Court in *Alessi* was whether a New Jersey law prohibiting pension plans from offsetting workers' compensation benefits against pension plan benefits was preempted. Although no plan was maintained solely to comply with this law, the Court nevertheless addressed section 1003(b)(3) in a footnote because the appellants in that case had argued that

if a plan which is designed to comply with [an] applicable workmen's compensation law is not preempted by ERISA, then *a fortiori* the underlying statute with which such plan is permitted to comply equally escapes coverage.

Alessi, 451 U.S. at 523 n. 20 (quotation and quotation marks omitted). The Court rejected this attempt to exempt all workers' compensation laws by noting that the focus of section 1003(b)(3) is not upon the state law, but rather upon the plans affected by that law. See *id.* ("The only relevant state laws, or portions thereof, that survive this preemption provision are those related to plans that are themselves exempt from ERISA's scope."). The Board seems to infer from this focus upon the plan a requirement that the plan not in any way refer to another ERISA plan. Here again, there is no basis for the inference: The statute only requires that the plan be "maintained solely for the purpose of complying with applicable work[ers'] compensation laws or unemployment compensation or disability insurance laws." 29 U.S.C. § 1003(b)(3).

The Board also contends that its interpretation is supported by the policy underlying ERISA. Specifically, it argues that ERISA intended to insulate employer decisions concerning the provision of "health benefits under an ERISA plan, what level of benefits to provide, and how often to

change the benefits" from the influence of state laws. Application for a Preliminary Injunction at 10. In *Alessi*, however, the Supreme Court held that employers could offset unemployment compensation benefits paid to workers against the amounts owed under an ERISA covered plan. See *Alessi*, 451 U.S. at 521. The Court reasoned that this practice of offsetting was similar to the practice of actually integrating benefits from pension funds with benefits from other sources like social security, a practice that Congress recognized in the legislative history but did not prohibit. See H.R. Rep. No. 807, 93d. Cong., 2d Sess. 69 (1974) (noting that ERISA would "not affect the ability of plans to use integration procedures"). Thus, in *Alessi* the Court found that, far from erecting a Chinese wall between ordinary ERISA plans and plans maintained solely to comply with workers' compensation laws, Congress had "acknowledged and accepted" the practice of determining the benefits levels of ERISA plans with reference to workers' compensation benefits. *Alessi*, 451 U.S. at 521.

In sum, to the extent that the Board argues that the workers' compensation law exemption does not apply to laws relating to ERISA plans, it contradicts the plain language of the statute and the holding in *Shaw*. To the extent that the Board seeks to imply a limitation into section 1003(b)(3) for plans referring to other ERISA plans, the Board has failed to show any basis for it in the text of the exemption, in the Supreme Court's decision in *Alessi*, or in the policies underlying the statute.

C.

The Board also contends that the Act is not a workers' compensation law within the meaning of section 1003(b)(3). According to the Board, when Congress passed ERISA in 1974, no workers' compensation laws included health insurance benefits. Ostensibly, the laws at that time only provided for lump sum payments. Because the Act requires employers to provide health insurance, the Board concludes

that the Act is not covered by section 1003(b)(3). The Board has not, however, explained why Congress would have wanted to adopt a static definition of workers' compensation statutes. Furthermore, ERISA contains an extensive set of definitions. See 29 U.S.C. § 1002. It is unlikely that in such a highly reticulated statute Congress simply forget to define workers' compensation (or for that matter unemployment compensation and disability insurance). It is much more likely that it intended to incorporate state law definitions. This conclusion is supported by the fact that section 1003(b)(3) refers to workers' compensation *laws* not workers' compensation.

D.

Finally, in a footnote, the Board of Trade suggests that the Act is preempted by the Consolidated Omnibus Budget Reconciliation Act of 1985, 29 U.S.C. § 1161 *et seq.* By itself, such a suggestion is not sufficient to warrant interference with the duly enacted laws of the District of Columbia. See *supra* at 8[26a].

III.

Accordingly, an accompanying order will grant defendants' motion to dismiss, deny plaintiff's application for a preliminary injunction, and dismiss the complaint.

/s/ Louis F. Oberdorfer

UNITED STATES DISTRICT JUDGE

Date: March 27, 1991

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 91-0511-LFO

THE GREATER WASHINGTON BOARD OF TRADE,
Plaintiff,

v.

DISTRICT OF COLUMBIA AND
SHARON PRATT DIXON,
Defendants.

ORDER

For the reasons stated in the accompanying memorandum,
it is this 27th day of March, 1991 hereby

ORDERED: that plaintiff's Application for a Preliminary
Injunction should be, and is hereby, denied; and it is further

ORDERED: that defendant District of Columbia's Motion
to Dismiss the Complaint for Preliminary and Permanent
Injunction and Declaratory Judgment should be, and is
hereby, granted; and it is further

ORDERED: that the complaint should be, and is hereby,
dismissed.

/s/ Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

Filed: March 27, 1991

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1991

CIVIL ACTION No. 91-00511

No. 91-7061

THE GREATER WASHINGTON, BOARD OF TRADE,
Appellant

v.

THE DISTRICT OF COLUMBIA, *et al.*,
Appellees

Before: MIKVA, *Chief Judge*; WALD AND BUCKLEY, *Circuit Judges.*

ORDER

Upon consideration of appellees' Petition for Rehearing,
filed December 16, 1991, it is

ORDERED, by the Court, that the petition is denied.

Per Curiam
For The Court:

CONSTANCE L. DUPRE, *Clerk*

/s/ BY: Robert A. Bonner

ROBERT A. BONNER
Deputy Clerk

Filed: January 10, 1992

STATUTES INVOLVED

I. The District of Columbia Workers' Compensation Equity Amendment Act of 1990, D.C. Law 8-198, 37 D.C. Reg. 6890 (1990), codified in scattered sections of D.C. Code Ann. §§ 36-301 to -342.1 (Supp. 1991), provides in pertinent part (D.C. Code Ann. § 36-307 (a-1)):

(1) Any employer who provides health insurance coverage for an employee shall provide health insurance coverage equivalent to the existing health insurance coverage of the employee while the employee receives or is eligible to receive workers' compensation benefits under this chapter.

(2) For purposes of this subsection the phrase "eligible to receive" means:

(A) An employee is away from work due to a job-related injury for which the employee has filed a claim for workers' compensation benefits under this chapter; or

(B) An employer has knowledge of a job-related injury of an employee who is away from work due to the job-related injury pursuant to which workers' compensation benefits may become due under § 36-315.

(3) The provision of health insurance coverage shall not exceed 52 weeks and shall be at the same benefit level that the employee had at the time the employee received or was eligible to receive workers' compensation benefits.

(4) Except as provided in paragraph (3) of this subsection, an employer shall pay the total cost for the provision of health insurance coverage during the time that the employee receives or is eligible to receive workers' compensation benefits under this chapter, including any contribution that the employee would have made if the employee had not received or been eligible to receive workers' compensation benefits.

II. The Employee Retirement Income Security Act of 1974, 88 Stat. 829, as amended, 29 U.S.C. § 1001 *et seq.*, provides in pertinent part:

Section 3(1), 29 U.S.C. § 1002(1):

The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

Section 4, 29 U.S.C. § 1003:

(a) Except as provided in subsection (b) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained —

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) The provisions of this subchapter shall not apply to any employee benefit plan if —

(1) such plan is a governmental plan (as defined in section 1002(32) of this title);

(2) such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under section 410(d) of Title 26;

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 1002(36) of this title) and is unfunded.

Section 514(a) & (b), 29 U.S.C. § 1144 (a) & (b):

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title [section 4(a)], which is not exempt under section 1003(b) [section 4(b)] of this title . . . , nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.